



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

June 26, 2009

Stan O. Van Vleck  
DiMare, Van Vleck & Brown LLC  
925 L Street, Suite 850  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-09-149**

Dear Mr. Van Vleck:

This letter responds to your request for advice regarding the campaign and lobbying provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. As a registered lobbyist, may you hold a fundraiser in your home that will cost more than \$500 for a candidate for Governor whose agency you are registered to lobby?
2. If you may not hold the fundraiser, may your wife (who is not a registered lobbyist) hold the fundraiser at your home?

### CONCLUSION

1. No. Because the cost of the fundraiser will be more than \$500, your personal expenditures will be a contribution to the candidate. Section 85702 prohibits a lobbyist from making a contribution to an elected state officer or a candidate for elective state office if the lobbyist is registered to lobby the agency for which the candidate is seeking election.

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. The Act generally does not prohibit your spouse from holding a fundraiser for any candidate in your home. However, if the fundraiser is for a candidate to whom you cannot make a contribution under Section 85702, you cannot suggest to your spouse to hold the fundraiser, participate in arranging the fundraiser, attend the fundraiser, or permit dissemination of information indicating that you are associated with the fundraiser.

### FACTS

You are a registered lobbyist and wish to hold a fundraiser in your home for a candidate for the office of Governor. You are registered to lobby the Governor's office. Your wife, who is also politically active, is not a registered lobbyist.

The event would likely cost more than \$500. You wish to know whether you can hold the event in your home.

### ANALYSIS

#### Contributions:

The term "contribution" is defined in the Act as a "payment, ...except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes." (Section 82015.) A payment is made for political purposes if it is: (1) for the purpose or influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage or any measure; or (2) received by or made at the behest of a candidate. (Regulation 18215(a).)

Section 82015(f) provides an exception to the term "contribution" for payments made by the occupant of a home or office for costs related to any meeting or fundraising event in the occupant's home or office if the costs for the meeting or fundraising event are \$500 or less.

The Commission's longstanding advice has been that the total cost of such an event *cannot* exceed \$500 and still come within the exception. This includes goods or services provided by the candidate or any other person attending the event. If the cost of the event exceeds \$500, all payments are counted as contributions. (*Paiva* Advice Letter, No. A-06-014; *Thompson* Advice Letter, No. A-86-121; *Watson* Advice Letter, No. I-94-219; *Raper* Advice Letter, No. I-97-282.)

You stated that the fundraiser you plan to hold at your home will cost more than \$500. Accordingly, the exception under Section 82015(f) does not apply and your personal expenditures will result in a contribution to the candidate.

Lobbyist Contributions:

Section 85702, added to the Act by Proposition 34, provides the following:

“An elected state officer or candidate for elected office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer.”

You stated that the candidate on whose behalf the fundraising event is planned is a candidate for the office of Governor and that you are a lobbyist registered to lobby the Governor's office. Section 85702 prohibits you from making contributions to this candidate whose office you are registered to lobby. Therefore, you may not hold the fundraiser for the candidate at your home.

Alternatively, you ask whether your wife, who is not a registered lobbyist, may hold a fundraiser for the same candidate at your home in the event you are prohibited from doing so under the Act.

There is nothing in the Act that prohibits a lobbyist's spouse from making a contribution to any candidate. In fact, Section 85308(a) specifically provides that contributions by a husband and wife are not aggregated for purposes of the Act's reporting and contribution limit provisions, and are thus considered separate contributions from each individual under the Act.

However, we think the lobbyist contribution prohibition in Section 85702 places severe restrictions on the lobbyist's involvement in his or her spouse's act of making a contribution to a candidate to whom the lobbyist otherwise cannot contribute. Neither the Act nor Commission regulations or advice have, as yet, specifically addressed the issue of an in-home fundraiser held by the lobbyist's spouse for such a candidate. However, we think Regulation 18572 provides ample guidance on this issue.

Among other things, Regulation 18752 provides that a lobbyist makes a contribution prohibited by Section 85702 when the contribution is made by a business entity owned in whole or part by a lobbyist and the lobbyist participates in the decision to make the contribution. (Regulation 18572(a)(2).) Although your home is not a “business entity” under the Act, this provision has two elements that we think are relevant to analyzing your question: (1) the contribution is financed by an asset owned by the lobbyist, and (2) the lobbyist participates in the decision to allocate the asset toward the contribution. Obviously, your assets are being used to make a contribution if your home is used to hold a fundraiser that costs \$500 or more. Also, you would be deemed to

participate in the decision to make the contribution if you suggest holding the fundraiser to your spouse or otherwise are involved in any of the arrangements for the fundraiser. In other words, while your spouse could independently decide to hold such a fundraiser at your home, we think Section 85702 prohibits you from suggesting the fundraiser to your spouse or participating in arranging it in any way.<sup>2</sup>

In addition, Regulation 18752 provides that a lobbyist makes a contribution prohibited by Section 85702 when he or she, among other things, “delivers or transmits” a contribution to the prohibited candidate that is made from the lobbyist’s personal funds or assets. (Regulation 18752(a)(1).) It is possible that your spouse could make clear that she is making the decision on use of the home for the contribution and is thus the person “delivering or transmitting” it to the candidate. However, we think this declaration would be negated by your presence at the fundraiser or dissemination of information such as in invitations indicating in any way that you are associated with the fundraiser. As a consequence, we think you would effectively be delivering or transmitting the contribution to the candidate, and thus violating Section 85702, by attending the fundraiser or permitting dissemination of information indicating that you are associated with the fundraiser.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin  
General Counsel

By: Emelyn Rodriguez  
Counsel, Legal Division

ER:jgl

---

<sup>2</sup> While it is possible that your spouse could independently decide to hold the fundraiser in question, your posing this question to us suggests you may have already discussed this with your wife and thus participated in the decision. If this is the case and your spouse holds the fundraiser, you will have violated Section 85702.